IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10-04-2007

Coram :

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2567 of 2003

N.Vidhyasagar ... Appellant/Petitioner in WP 1778/95

Vs.

The Deputy Manager
Syndicate Bank,
Zonal Office,
Syndicate Bank Building,
Gandhi Nagar,
Bangalore - 560 009. .. Respondent/Respondent in -do-

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 20.06.2003 made in W.P.No.1778 of 1995.

WP 1778/95: Petition presented to this Court under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records relating to charge memo dated 15.4.94 issued by the Deputy General Manager, Syndicate Bank Zonal Office, Bangalore in his Ref.No.CCS (O) ENG 9/18 and quash the same.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel for
M/s. AL.Gandhimathi

For Respondent : Mr.Karthik for M/s.T.S.Gopalan & Co.

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JUDGMENT

(Judgment of the Court was delivered by S.TAMILVANAN, J.)

This writ appeal is directed against the order, dated 20.06.2003, made in W.P.No.1778/95 by the learned single judge,

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dismissing the writ petition, whereby the appellant herein had challenged the charge memo, dated 15.04.1994, issued upon him by the respondent.

2. The brief facts of the case are as follows :

The appellant herein was employed as Sub-Manager of the Syndicate Bank, Kodambakkam Branch. During the relevant period between 04.02.1985 and 21.07.1986, one Mrs.Kamatchi Srinivasan, an employee had obtained jewel loan from the Bank, by pledging her jewels. The jewels were to be kept in safe custody under double lock system, as per procedure followed by the Bank. Out of two keys, one was with the petitioner and the other was with the Assistant Manager and accordingly, the petitioner was a custodian of the key. It was found at the time of redemption of the jewels pledged in the Bank that the same had been substituted and hence, a criminal prosecution was initiated under Section 409 IPC. During the investigation of the case, the appellant herein was placed under suspension. Subsequently, after the trial, the appellant was convicted by the XI Metropolitan Magistrate Court, Chennai, by its judgment, dated 27.04.1989, which was confirmed by the II Additional Sessions Judge, Chennai, by his judgment, dated 17.11.1989, in the appeal in Crl.A.No.93/89 preferred by the appellant herein. The Criminal revision preferred by the appellant in Crl.R.C.No.676 / 89 was allowed by this Court and the conviction and sentence imposed on him by courts below were set aside, by an order, dated 04.09.1992, on the ground that the prosecution has failed to establish the case against the appellant.

3. It is not in dispute that the petitioner was dismissed from service by the respondent bank, after the judgment of the trial court, dated 27.04.1989. Subsequently, since the petitioner was acquitted, as per the order passed by this Court in the criminal revision, a representation was made by the appellant to reinstate him in service. However, the bank authority decided to hold a departmental enquiry and placed him under deemed suspension from the date of his removal, i.e., 16.09.1989, by order, dated 10.05.1993 and the charge memo, dated 15.04.1994 was also issued on the petitioner, which was challenged in the writ petition. Learned single Judge, considering the writ petition, held that there is no merit in the writ petition, and accordingly, dismissed the same, subject to certain directions contained in paragraph number 17 of the impugned order.

4. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellant would contend that the respondent bank had not initiated any departmental proceeding against the appellant, on the alleged charges, while the criminal case was pending and as the conviction and sentence imposed on the appellant in the criminal

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case were set aside by this court in Crl.R.C.No.676/89, the departmental proceedings initiated by the respondent is against law. According to the learned counsel for the appellant, it would not be open to the respondent to order departmental proceeding, on the same set of allegations raised before the criminal court, after the appellant was acquitted. According to him, the appellant was completely exonerated from the charges levelled against him and hence, it would not be proper and legally sustainable for the respondent to initiate any disciplinary proceeding, after the acquittal was recorded in the criminal case. It was further submitted on behalf of the appellant that the respondent bank has initiated departmental proceeding against the appellant, 7 years after the criminal case was instituted, hence the same is not legally maintainable. According to the learned senior counsel, the appellant was initially suspended, only on the ground of the criminal case pending against him and also considering his detention in custody. Subsequently, he was dismissed from service on account of the conviction and sentence imposed on him in the criminal case by the learned Metropolitan Magistrate and confirmed by the appellate court, namely, II Additional Sessions Judge, Chennai. Since this court has acquitted the appellant in the revision in Crl.R.C.No.676/89, according to the learned senior counsel appearing for the appellant, the respondent bank should not have initiated the departmental proceedings, after the acquittal recorded in the criminal case. In support of his contention, the following decisions were relied on by the learned Senior Counsel appearing for the appellant :

1. Corporation of Nagpur City, Civil Lines v. Ramachandra reported in (1981) 2 SCC 714
2. M.Paul Anthony v. Bharath Gold Mines Ltd., reported in (1999) 3 SCC 679
3. South Bengal State Transport Corpn. v. Swapan Kumar Mitra, reported in JT 2006 (2) SC 307.
4. G.M.Tank v. State of Gujarat, reported in (2006) 5 SCC 446.

5. Per contra, Mr.T.Karthik, learned counsel appearing for the respondent would contend that the departmental proceeding is distinct from the criminal case, lodged against the appellant and the acquittal in the criminal case, would not relieve the appellant from the charges framed in the departmental enquiry. According to the learned counsel for the respondent,though the appellant herein was initially convicted by the trial court, by its judgment, dated 27.04.1989 and the appeal in Crl.A.No.93 of 1989, preferred by the appellant was also dismissed, in the revision, only, by giving benefit of doubt, the appellant was acquitted by this Court and hence, the same cannot be construed as an Honourable acquittal. Therefore, the respondent was at liberty to initiate departmental proceedings and take appropriate action against a appellant, the

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delinquent official, as per law.

6. In support of his contention, learned counsel appearing for the respondent submitted the following decisions :

1. The Deputy Superintendent of Police v. W.D.Sekaran reported in 2005 (5) CTC 672.
2. Ajit Kumar Nag v. Genetal Manager (PJ), Indian Oil Corpn. Ltd., reported in (2005) 7 SCC 764.
3. Commissioner of Police v. Narender Singh, reported in (2006) 4 SCC 265.
4. Uttaranchal Road Transport Corpn. v. Mansaram Nainwal, reported in (2006) 6 SCC 366.
5. G.M.Tank v. State of Gujarat, reported in 2006 (3) CTC 494.
6. Senior Superintendent of Post Offices v. A.Gopalan, reported in (1997) 11 SCC 239.

7. It is not in dispute that the appellant herein was functioning as Sub-Manager of the respondent bank, Kodambakkam branch, from 04.02.1985 to 21.07.1996, during the period, when Mrs. Kamatchi Srinivasan, an employee of the bank was getting loan from the bank, by pledging her jewels of 322 grams of gold. As per the procedure followed by the bank, the jewels were to be kept in safe custody under double lock system. Accordingly, one of the keys was with the appellant and the other key was with the Assistant Manager of the bank. At the time of redemption of jewels, as it was found that the jewels so pledged had been substituted and thereby offence was committed, criminal case was instituted under Section 409 IPC. Though, the appellant herein was convicted and sentenced by the learned Metropolitan Magistrate and the same was confirmed by the appellate court, namely, the II Additional Sessions Court, Chennai, this court, by order, dated 04.09.1992 allowed the criminal revision preferred by the appellant and thereby set aside the conviction and sentence, imposed on him. At this stage, the respondent initiated departmental proceeding against the appellant, which was being challenged in the writ petition. The question of law to be decided is Whether a departmental proceeding can be initiated by the authorities, after the delinquent official was acquitted, in the connected criminal case.

8. In the decision, M.Paul Anthony v. Bharath Gold Mines Ltd., reported in (1999) 3 SCC 679, the Hon'ble Apex Court held as follows :

> " 22. The conclusions which are deducible from various decisions of this Court referred to above are :
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar

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in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involved complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

In the aforesaid case, relied on by learned counsel for the appellant, the Hon'ble Apex Court has held categorically that criminal proceeding and departmental proceeding are distinct and they can be continued independently, but when both the proceedings were based on the same set of facts, which was sought to be proved by the same witnesses and when the court had already acquitted the appellant (accused) by rejecting the prosecution case, the subsequent findings recorded against the appellant in an exparte disciplinary enquiry would not be sustainable. Here in the instant case, there is no exparte disciplinary enquiry and as contended by the learned counsel for the respondent, in the departmental

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proceeding, the factors operating in the mind of the disciplinary authority would be of enforcement of discipline or to investigate the level of integrity of the delinquent official. The standard of proof required in the departmental proceeding is also different from that of the standard of proof required in a criminal case. While in the departmental proceeding, the standard of proof required against the delinquent official is of preponderance or probabilities, but in a criminal case, the charges levelled against the accused person shall be proved by the prosecution beyond all reasonable doubts.

9. In the decision, G.M.Tank v. State of Gujarat, reported in (2006) 5 SCC 446, the Hon'ble Apex Court has held, with regard to the sustainability of the departmental enquiry and the dismissal of the delinquent official thereon. When the departmental proceeding and the criminal case are based on the same set of facts and as there was no evidence against the employee to hold him guilty, and the criminal court recorded an Honourable acquittal, a contrary finding in the departmental proceeding, resulting in dismissal of the delinquent official from service is held unjust, unfair and oppressive. The decision would not be applicable, if there was no Honourable acquittal.

10. In the decision, R.P.Kapur v. Union of India, reported in AIR 1964 SCC 787, it has been held " If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow, where the acquittal is other than honourable."

11. It is not disputed by the learned counsel for the respondent that when a delinquent official is acquitted honourably and completely exonerated from the charges, it would not be expedient to continue the departmental enquiry against him, on the very same charges or grounds or evidence. But, according to him, the appellant herein was acquitted only by giving benefit of doubt in the criminal revision, though he had been convicted by the trial court and the same was confirmed in appeal preferred by him and therefore, acquittal recorded in the criminal revision cannot be an Honourable acquittal and hence, as per the decision, the departmental proceeding may continue.

12. In the decision, South Bengal State Transport Corpn. v. Swapan Kumar Mitra, reported in JT 2006 (2) SC 307, the Hon'ble Apex Court has held that in a criminal case, the charges have to be proved beyond reasonable doubt, while in departmental proceedings, the standard of proof required is mere preponderance of probabilities and therefore, in spite of acquittal in the criminal proceeding, an order of dismissal emanating from departmental

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proceeding can be sustainable. As per this decision, it is clear that mere acquittal in a criminal proceeding would not " ipso facto", nullify the departmental proceeding.

13. In the decision, Corporation of Nagpur City, Civil Lines v. Ramachandra reported in (1981) 2 SCC 714, at page number 718, the Hon'ble Apex Court has held as follows :

> " 6. Normally when the accused is acquitted honourably and completely exonerated of the charge it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, the power of the authority concerned to continue the departmental enquiry is not taken away not is its direction in any way fettered. However, as quite some time has elapsed since the departmental enquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental enquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the enquiry, it can certainly do so."

As per this decision, as contended by the learned counsel for the respondent, mere acquittal of the accused in the criminal case would not take away the power of the authority concerned, to continue the departmental enquiry, against the delinquent official, if the authority holds that there is sufficient evidence and good grounds, to proceed with the departmental proceeding.

14. At this juncture, we find it reasonable to refer to the ruling of the Apex Court with regard to law of precedents in the decision, Uttaranchal Road Transport Corpn. v. Mansaram Nainwal, reported in (2006) 6 SCC 366, which reads as follows

> "13... According to the well-settled theory of precedents, every decision contains three basis postulates :
>
> (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of

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> the above. A decision is an authority for what is actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent."

As per this ruling, the essence of a decision is its ratio and not every observation made there in to be construed as ratio decidenti and as such a binding precedent.

15. In the above said case, the Hon'ble Apex Court, after considering the ratio laid down in Paul Anthony's case (supra), has clearly ruled that mere acquittal in a criminal case, neither direct for an automatic reinstatement of the delinquent in service, nor render a departmental proceeding invalid by itself.

16. In the decision, Commissioner of Police v. Narender Singh, reported in (2006) 4 SCC 265, the Hon'ble Apex Court has categorically held that mere acquittal in a criminal trial itself is not a ground to initiate or drop any departmental proceedings.

17. In the decision, G.M.Tank v. State of Gujarat, reported in 2006 (3) CTC 494, the Hon'ble Apex Court has held that when criminal proceedings ended in acquittal, by Judicial pronouncement made after regular and hot trial, it would be unjust and unfair and rather oppressive to allow findings recorded in the departmental proceedings to stand, based on same set of facts and same set of evidence and when there is an Honourable acquittal of an employee, during the pendency of a proceeding, it has to be taken note of that the decision in Paul Anthony's case (supra) will apply.

18. In the decision, Senior Superintendent of Post Offices v. A.Gopalan, reported in (1997) 11 SCC 239, it has been ruled by the Hon'ble Apex Court that acquittal in criminal trial, based on the benefit of doubt, would not be a bar in imposing penalty, by way of departmental proceedings.

19. Taking note of various decisions of the Hon'ble Apex Court, the Division Bench of this Court in the decision, The Deputy Superintendent of Police v. W.D.Sekaran reported in 2005 (5) CTC 672, held that it is not axiomatic that in all cases, where the criminal proceedings based on very same set of facts ended in acquittal, departmental action should not be proceeded with.

20. Therefore, in the light of the decisions referred above,

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we are of the considered view that if an acquittal in a criminal case is not an Honourable one, it would be open to the authorities to proceed with the departmental proceedings, against the delinquent official, which is no way against law.

21. As per the judgment of this Court in the criminal revision in Crl.R.C.No.676/89, at paragraph number 3, the following charge had been framed against the appellant :

> "3.The charge against the accused as found from the evidence of the prosecution witnesses is that the accused had taken away 322 grams of jewels pledged by P.W.2 in the bank and pledged the same in different pawn brokers' shops and obtained a sum of Rs.37,650/- and thereby committed criminal breach of trust."

22. As per the Judgment, dated 04.09.1992, rendered in Crl.R.C.No.676/89, while allowing the revision, this Court has held that the prosecution had failed to establish the case. Though there is no specific finding that benefit of doubt was given to the appellant, who was accused in the case, we are of the considered view that the criminal revision has been allowed, on the ground of giving benefit of doubt to the appellant / accused, hence it cannot be held as an Honourable acquittal. In this writ appeal, it is not in dispute that the learned Metropolitan Magistrate convicted the appellant, holding that the charges levelled against him had been proved beyond reasonable doubt. The appellate court, namely, the II Additional Sessions Court had also confirmed the conviction and sentence imposed by the trial court. In the criminal revision, as pointed out by the learned counsel for the respondent that on account of the witnesses, P.W.7 to P.W.12 in that case turned hostile, this court has reversed the finding of the courts below.

23. It is seen further from the judgment of this court rendered in the said criminal revision, at paragraph number 8, that the Inspector of Police, P.W.17 therein had gone to Bangalore, met the Branch Manager of the Syndicate Bank, gave a requisition to him, for examining the table used by the appellant herein (accused). Accordingly, the Inspector examined and seized the pledge cards, M.O.s.5 to 10, under Ex.P.20 therein. It is seen that the learned XI Metropolitan Magistrate, Chennai, by comparing the signature available in the seized pledge cards with the signature of the appellant, held that the signature was that of the appellant herein and considering the evidence held that the charge against the appellant had been proved. This Court in the said criminal revision has held that the aforesaid pledge cards should have been sent to handwriting experts opinion, in order to arrive at a correct conclusion, though under Section 73 of the Indian

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Evidence Act, the Magistrate was competent to compare the signature.

24. On the perusal of the copy of the judgment rendered in the criminal revision, we are of the considered view that the criminal revision has been allowed and the accused was acquitted, only on account of giving benefit of doubt to the appellant / accused. It is quite clear that the appellant was acquitted by this court in the criminal revision, only by giving benefit of doubts to him and therefore, the same cannot be construed as an Honourable acquittal,though it has been stated in the judgment that the prosecution has failed to establish the case.

25. On a careful consideration of the judgment rendered in the criminal revision referred above, we are of the considered view that the acquittal recorded by this Court in the said criminal proceeding is not an Honourable acquittal and therefore, it is open to the respondent to proceed with the departmental proceeding. Accordingly, we could find no error in the order of dismissal, passed by the learned single judge. We, therefore, confirm the order dated 20.06.2003 passed in W.P.No.1778/95 by the learned single judge and dismiss the writ appeal. However, considering the facts and circumstances, we direct the respondent to complete the departmental proceeding, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

tsvn
To

The Deputy Manager
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Syndicate Bank Building,
Gandhi Nagar,Bangalore - 560 009.

+1cc to M/s..AL.Ganthimathi, Advocagte Sr 23166
+1cc to M/s.T.S.Gopalan & Co., Sr 22696

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